

Remarks

The Office has issued an Official Action mailed on December 1, 2004. In this Official Action, the Office has rejected each of the pending 8 claims. The applicants submit that this paper is fully responsive to each of the issued raised in the Official Communication, either by a direct response or by rendering the issue moot.

Rejections – 35 USC § 112

The Office has rejected claims 6 and 7 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. In particular, the Office found the claim language "... is at least partially based on ..." to be unclear requiring alternate wording. The applicant is unsure why the Office has rejected the claim on this basis. The language in claim 6 states that the selection of the gateway is at least partially based on attempting to minimize the time between when the gateway is requested to generate the message and when the recipient receives the message. Claim 7 further limits this aspect of the invention by reciting that the gateway can determine the round trip time between itself and the recipient's machine and the selection of a gateway is at least partially based on the determined round trip time. For claim 6, the selection criteria to minimize the time can be many factors, not just the round trip time. For instance, loading of the gateway could also effect the time. Thus, the applicants submit that claim 6 and 7 should not be rejected on this rational. Claim 7 has been amended to remove the RTT reference.

Rejections – 35 USC § 103

The Office has rejected claims 1-8 under 35 U.S.C. § 103 as being unpatentable over the combined teachings of U.S. Patent No. 6,654,373 to Maher in view of U.S. Patent Application published as US2002/0026360 A1 to McGregor. We have carefully reviewed the reference and strongly disagree with the Office's characterization of these references, do not believe that the references should be combined, and when combined, they fail to disclose each and every element of the claimed invention.

However, rather than directly responding to each of the Office's points, the applicants wish to point out that the present application is a national phase application filed under Section 371 claiming priority to PCT/US99/22948 filed on October 12, 1999 as shown in the attached Official Filing Receipt from the United States Patent Office.

The references cited in the Official Action are not valid prior art references in that they were filed after the claimed priority date.

US Patent Number 6,654,373 B1 was filed on June 12, 2000 and does not claim an earlier priority date.

US Patent Application 2002/0026360 A1 was filed on April 11, 2001 and claims priority of U.S. Provisional Application No. 60/196,191 filed on April 11, 2000.

Both of these references are later than the claimed priority of the present application and thus, are not valid 103 references.

35 U.S.C. 102 (e) states that "an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language"

The attached front page of the PCT publication confirms that these requirements were met.

Conclusion

Applicant respectfully submits that the currently pending claims are in condition for allowance and respectfully requests that the case be processed to issuance.

If the Office has any questions or if there are any actions that can be handled through an Examiner's Amendment, the applicant requests the Office to contact the attorney of record using the below-provided contact information.

Respectfully submitted,

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